

Appln. No. 10/003,011

Attorney Docket No. 8627-213  
Client Reference No. PA-5270-RFB**II. Remarks**

Reconsideration and re-examination of this application in view of the following remarks is herein respectfully requested.

Claims 2 and 21 have been cancelled. Claims 1, 3-20, and 22 remain pending.

***Claims Rejections - 35 U.S.C. §112***

Claim 3 was rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention.

Claim 3 previously depended from cancelled claim 2. Claim 3 has been amended to depend from claim 1. Accordingly, applicants respectfully request withdraw of the rejection under 35 U.S.C. §112.

***Claim Rejections - 35 U.S.C. §103(a)***

Claims 1, 2, and 4-7 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,695,813 to Boyle (Boyle) in view of U.S. Patent No. 5,681,347 to Cathcart, et al. (Cathcart) in view of U.S. Patent No. 5,484,444 to Braunschweiler et al. (Braunschweiler).

Claim 1 includes a control assembly disposed at a proximal end of said outer sheath and said proximal end portion of said elongate control member [cannula] and in operative relation thereto [to the cannula] for urging said grasping portion from a distal end of said outer sheath and retraction thereinto [into the sheath], wherein said

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elongate control member is a flexible cannula defining a lumen extending therethrough into which a guide wire is receivable and movable with respect thereto. None of the references teach or suggest the relationship of the control assembly moving the cannula to extend and retract the grasping portion from the sheath. While the examiner has provided certain elements of claim 1 in independent references, the references alone or in combination do not teach or suggest the configuration of elements provided in claim 1. The examiner relies on Boyle to teach the grasping portion (actually more a filter device), Cathcart to teach the control assembly, and Braunschweiler to teach the cannula. The cannula of Braunschweiler does not at all relate to the devices in Cathcart or Boyle. The cannula is not attached to either a control assembly or a grasping device. The cannula in Braunschweiler pushes a stent type device that self expands against the vessel wall and remains in the vessel. The stent is not attached to the cannula and is not retracted by the cannula.

In addition, no factual support is provided in any of the references that provide a suggestion to combine or indicate that combination would have been obvious to one of ordinary skill in the art at the time of the invention. "The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness." MPEP §2142 Therefore, Boyle, Cathcart, and Braunschweiler do not teach or suggest the present invention according to claim 1. Claims 4-7 depend from claim 1 and are, therefore, patentable for at least the same reasons as given above in support of claim 1. Claim 2 was cancelled in the previous office action.

Claim 3 was rejected under 35 U.S.C. §103(a) as being unpatentable over Boyle in view of Cathcart, in view of Braunschweiler.

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Boyle does not teach or suggest the elements noted above as missing from claim 1. Further, claim 3 depends from claim 1 and is, therefore, patentable for at least the same reasons as given above in support of claim 1.

Claims 8-22 were rejected under 35 U.S.C. §103(a) as being unpatentable over Boyle in view of Cathcart, and in view of U.S. Patent No. 5,098,440 to Hillstead (Hillstead) in view of Braunschweiler.

Hillstead does not teach or suggest the elements noted as missing above from claim 1. Further, claims 8-20 depend from claim 1 and are, therefore, patentable for at least the same reasons as given above in support of claim 1.

In addition, claim 13 recites that the grasping portion includes four (4) preformed wire loops. The Hillstead does not teach or suggest four (4) preformed wire loops.

Claim 21 has been cancelled. Accordingly the rejection with regard to claim 21 is moot.

Claim 22 also includes a control assembly disposed at a proximal end of the outer sheath and the proximal end portion of the elongate control member and in operative relation thereto for urging the grasping portion from a distal end of the outer sheath and retraction thereinto, wherein the elongate control member is a flexible cannula defining a lumen extending therethrough into which a guide wire is receivable and movable with respect thereto. Therefore, the arguments presented above in support of claim 1 are equally applicable to claim 22.

Clearly, for at least the reasons noted above, the cited references do not teach or suggest the invention according to the claims of the instant application. Accordingly, applicants respectfully request withdrawal of the rejection under 35 U.S.C. §103.

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*Conclusion*

In view of the above amendments and remarks, it is respectfully submitted that the present form of the claims are patentably distinguishable over the art of record and that this application is now in condition for allowance. Such action is respectfully requested.

Respectfully submitted by,

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